is stated in *Halsbury's* Laws of England, 3rd Edn. Vol. 11, paragraph 108 at page 53:

"108. Many statutes contain provisions substituting for the orders of *mandamus*, prohibition and *certiorari* a different procedure for bringing before the court matters or questions arising under the statute. A common form is a provision that, if any person, aggrieved by an order made under the Act, desires to question the validity thereof on the ground that it is not within the powers of the Act or that any requirement of the Act has not been complied with, he may make an application to the Court, and the Court may, if satisfied that the order is not within the powers of the Act or that the interests of the applicant have been substantially prejudiced by any requirement of the Act not having been complied with, quash the order; but that save as aforesaid the order shall not be questioned by prohibition or *certiorari* or in any legal proceedings whatsoever."

Further at page 63 appears this passage —

"*Certiorari* will not be granted to quash the decision of an inferior tribunal within its jurisdiction on the ground that the decision is wrong in matters of fact, and the Court will not hear evidence impeaching the decision on the facts." [See *R.* v. *Nat Bell Liquors, Ltd.* [1922] 2 A.C. 128 P.C.; *R.* v. *Bolton* (1841), 1 Q.B. 66.] "It is not now necessary for magistrates to set out the evidence in a conviction before them; but if they choose to do so, or if an inferior tribunal elects, or is required by the legislation constituting it, to set out the evidence adduced before it in its order, and thus make it a "speaking order", still the superior court will not on *certiorari* inquire whether the inferior tribunal has come to a right decision on the facts. Where the evidence is set out in the conviction or order, and the superior court is of opinion that there was no evidence proper to be considered by the magistrates in support of some point material to the conviction or order, *certiorari* will be granted. If there is any evidence, the court will not examine whether the right conclusion has been drawn from it." [See *R.* v. *Birmingham Compensation Appeal Tribunal of Ministry of Labour and National Service, Ex parte Road Haulage Executive*, [1952] 2 All E.R. 100, n.]

I agree therefore with the learned Chief Justice that this appeal be dismissed with costs.

Appeal dismissed.

Solicitors: *Skrine & Co.; Lim Cheng Ean & Co.; K. R. Chelliah Bros.*

ONG LOCK MUI v. DEPUTY PUBLIC PROSECUTOR

[A.Cr.J. (Syed Othman J.) October 28, 1971]

[Johore Bahru — Criminal Appeal No. 49 of 1969.]

Income Tax — Appeal — Assessment returns — Notice of — Failure to furnish within specified period — Income Tax Ordinance, 1947, ss. 90(1) & (2).

Interpretation — Construction of statutes — Repeal — Effect of saving clauses in later statute — Interpretation Act, 1967, s. 29 — Income Tax Act, 1967, ss. 1(3), 155, 156, Sch. 8 and 9 para. 3(1).

The appellant was charged and convicted of two offences under section 90(1), punishable under section 90(2), of the Income Tax Ordinance, 1947, for non-compliance of a notice requesting him to furnish his income returns for the years of assessment 1959 and 1966, within 40 days of its issue.

The appeal was on points of law. The appellant contended that on the day the notices were issued to him, the Ordinance and all its subsidiary legislation had been "wholly repealed and revoked". Therefore, the conviction on the charges could not be in respect of offences known to law, for by reason of the first limb of section 29 of the Interpretation Act, 1967, the repeal had the effect of obliterating the Ordinance and its subsidiary legislation. However, the appellant did not dispute that the Ordinance and its subsidiary legislation were still in force and that the Comptroller-General could still ask for returns under section 61A of the Ordinance; but he maintained that after 1968, when the Income Tax Act, 1967 came into force, the Comptroller-General had to apply the provisions of section 77 of that Act.

Held, dismissing the appeal: (1) the rule that the effect of repealing a legislation is to obliterate it completely, applies only where there are no express saving provisions in the repealing legislation;

(2) section 1(3) of the Income Tax Act, 1967, provides that the Act shall have effect for the year of assessment 1968 and subsequent years of assessment. The provisions of section 156 and paragraph 3(1) of Schedule 9 to the Act expressly save the Ordinance and its subsidiary legislation which are still in force for matters which relate to the years of assessment from 1948 to 1967.

Case referred to:-

(1) *In re R.* [1906] 1 Ch. 730.

INCOME TAX APPEAL.

Appellant in person.

Nizar bin Idris (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Syed Othman J.: The appellant was charged in the magistrate's court at Johore Bahru with two offences under section 90(1) of the Income Tax Ordinance, 1947 of failing without reasonable cause to furnish his income returns in respect of the years of assessment 1959 and 1966 within the period of 40 days as required by notices issued to him, and punishable under section 90(2) of the Income Tax Ordinance, 1947 (which I shall refer to as the Ordinance). He claimed trial. At the conclusion of the trial he was convicted and fined $100 on each charge.

In dealing with the appeal, I need only confine myself to the arguments of Mr. Ong, who is a senior member of the Johore Bar. In the lower court he defended the case himself and here also he has chosen to argue the appeal himself. The appeal is on points of law. The facts are not in dispute. They clearly show that Mr. Ong did not furnish the returns within the period required by the notices which were issued to him on 5th February, 1968 under section 61A of the Ordinance.

Mr. Ong's arguments are to the following effect. As on the day the notices were issued to him the Ordinance and all its subsidiary legislation had been "wholly repealed and revoked" his conviction on the charges against him could not be in respect of offences known to law; by reason of the first limb of section 29 of the Interpretation Act, 1967 the repeal had the effect of obliterating the Ordinance and its subsidiary legislation. At the same time, he says, he does not dispute that the Ordinance and its subsidiary legislation are still in force and that the Comptroller-General of Income Tax can still ask for statements under section 61A of the Ordinance, but he maintains that after 1968 when the Income Tax Act, 1967 (which I shall refer to as the Act) came into force, the Comp-

troller-General must apply the provisions of the Act as by section 77 of the Act he is empowered for any year of assessment to require any person by notice in writing to furnish him with a return in the prescribed form.

The Income Tax Act, 1967 came into force on 28th September, 1967.

The repealing provisions in the Act is contained in section 155. It reads:

"(1) The Acts and Ordinances specified in Schedule 8 are hereby repealed, to the extent therein specified, with effect from 1st January, 1968,

(2) All subsidiary legislation made under any Ordinance wholly repealed by sub-section (1) is hereby revoked with effect from 1st January, 1968."

One of the Ordinances specified in Schedule 8 is the Income Tax Ordinance, 1947. The extent of its repeal is stated to be the whole. However, section 156 of the Act provides that the transitional and saving provisions in Schedule 9 shall have effect notwithstanding section 155 or any other provision of the Act. The relevant saving provision which is paragraph 3(1) of Schedule 9 to the Act as amended by the Income Tax (Amendment) Act, 1967 reads:

"Subject to sub-paragraph (2) and the other provisions of this Schedule, each of the repealed laws shall remain in force for all purposes in relation to the year of assessment 1967 under the law in question and to previous years of assessment under that law."

I do not think it is necessary for me to discuss sub-paragraph (2) and the other provisions of Schedule 9 referred to in paragraph 3(1) above. They have no bearing to the matter in this appeal.

The first limb of section 29 of the Interpretation Act, 1967 provides that the repeal of a written law shall not revive any written law or other thing not in force or existing immediately before the repeal took effect. I cannot see how Mr. Ong can come to rely upon this provision since he has agreed that the Ordinance and its subsidiary legislation are still in force. In any case the rule that the effect of repealing a legislation is to obliterate it completely applies only where there are no express saving provisions in the repealing legislation. This rule is stated by Collins, M.R. in *In re R.*[1] at page 736 when he considered the question whether section 5 of the Trustee Act, 1850 which applied to property held by a criminal lunatic, was wholly repealed by section 342 of the Lunacy Act, 1890 which does not deal with criminal lunatics. I need only cite the principles in that case which I consider to be applicable to the present case. He said:

"There were one or two other cases cited which have an important application to the present case, that is to say, cases where you find in an Act a repealing clause followed by a saving clause. There you have to see how far the two enactments can co-exist. It seems to me that the principle laid down in those cases is applicable to the present case. And that principle is this: Where you have a repeal and you have also a saving clause, you have to consider whether the substituted enactment contains anything incompatible with the previously existing enactment. The question is, Aye or No, is there incompatibility between the two? And in those cases the judges, in holding that there was a saving clause large enough to annul the repeal, said you must see whether the true effect was to substitute something incompatible with the enactment in the Act repealed; and that, if you found something in the repealing Act incompatible with the general enactments in the repealed Act, then you must treat the jurisdiction under the repealed Act as *pro tanto* wiped out. That is settled by the cases of *Re Busfield* (1886), 32 Ch.D. 123, 131 and 132, and *Hume* v. *Somerton* (1890) 25 Q.B.D. 239".

In the present case the provisions of section 156 of the Act and paragraph 3(1) of Schedule 9 to the Act are clear and unequivocal. They expressly save the Ordinance and its subsidiary legislation.

Section 1(3) of the Act provides that the Act shall have effect for the year of assessment 1968 and subsequent years of assessment. Then paragraph 3(1) of Schedule 9 to the Act says that each of the repealed laws shall remain in force for all purposes in relation to the year of assessment 1967 under the law in question and to the previous years of assessment. It should be plain that by the provision in Schedule 9 the Ordinance and its subsidiary legislation are still in force for matters which relate to the years of assessment during which they apply, *i.e.* from 1948 to 1967. That the Act and the Ordinance can co-exist should be beyond any argument.

In arguing that the notices issued to him under the Ordinance and which relate to the years of assessment 1959 and 1966 were bad because they were made out in 1968, Mr. Ong relies on section 77 of the Act which gives the Comptroller-General power for any year of assessment to require any person to furnish him with a return. I have underlined the word "any" because of the emphasis that has been placed on this word in Mr. Ong's argument. I fail to see how this single word can have the effect of overriding the express provision in section 1(3) of the Act which says that the Act shall have effect for the year of assessment 1968 and subsequent years. The notices were in respect of the years of assessment 1959 and 1966 to which the Act does not apply by reason of section 1(3); they were in respect of the years covered by the Ordinance. The notices would have been clearly invalid if they had been issued under the Act since they do not relate to the year of assessment 1968 and thereafter. It is for the very purpose of enabling the Income Tax Department to get particulars in respect of the years before the Act that the Ordinance has been revived.

The appeal is dismissed.

Appeal dismissed.